

REMARKS

Claims 1-22 and 36 have been withdrawn from consideration as being drawn to a non-elected invention.

Claims 23-35 have been rejected under 35 U.S.C. §112, first and second paragraphs. The strains utilized in the preparation of the preferred embodiments have been deposited under the following codes:

Bacillus sphaericus 2362	ATCC deposit number SD-1170
Bacillus thuringiensis var	
israelensis BT 1-17	ATCC deposit number SD-1276

However, it should be noted that one of ordinary skill in the art could readily utilize other Bti or Bs strains in the compositions of the present invention. Accordingly, the claims should not be construed to be limited to the above-referenced strains.

Claims 23-35 have been rejected under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 5,560,909 to Rheaume et al. in view of U.S. Patent No. 5,501,852 to Meadows et al.

Rheaume et al. relate to methods of entrapping or encapsulating *Bacillus thuringiensis* var. *israelensis* and other microbials such as DNA viruses in charged polymers. Rheaume et al. actually used dried powder (as differentiated from fermentation slurries) in their encapsulation process. The encapsulation process, by itself, is a completely different manufacturing process, which is relatively expensive and utilizes polymeric spheres; the process is extremely restrictive in that it enables only heat-stable active ingredients to be processed. Rheaume et al. further utilize precipitation techniques and milling which further reduce the potency of the resulting compositions. These methods are inferior to the methods used to prepare the present composition, i.e., spray drying, and are not economical on production scale.

Meadows et al. relate to the biological control of lepidopterous pests using *Bacillus thuringiensis* and its subunits (meaning crystals and toxins) and does not

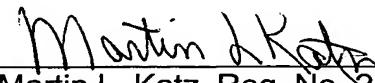
disclose or suggest combinations or mixtures of toxins or biological agents. The use of *Bacillus thuringiensis* for lepidopteran control is widely known and practiced; the organism used by Meadows et al. enables control of a terrestrial, leaf-eating, crop pest as compared to the use of *Bacillus thuringiensis* subsp. *israelensis* and *Bacillus sphaericus*, in this invention for the control of an aquatic stage of a dipteran insect pest.

Meadows et al. further teach physically combining *Bacillus thuringiensis* powder with inert ingredients (as opposed to viable living bacterial insecticides as described in our invention) to produce a wettable powder, dust, or granule. The method of Meadows et al. also requires milling, a step that is not conducive to live biologicals. The method is for the development of simple physical mixtures as differentiated from biological slurry mixtures well integrated prior to the spray-drying process, as described in our invention.

The combination of Meadows et al. and Rheaume et al. does not disclose, suggest, or provide motivation for, combining *Bacillus thuringiensis* subsp. *israelensis* with *Bacillus sphaericus*. Neither reference proposed combining these two specific agents for any purpose including increased efficacy and/or inhibition of resistance. Thus, the combination of these two references does not render obvious claims 23-35. Withdrawal of this rejection is respectfully requested.

If any fees are incurred as a result of the filing of this paper, authorization is given to charge Deposit Account Number 23-0785.

Respectfully submitted,



Martin L. Katz, Reg. No. 25,011
Attorney for Applicants

Date: July 23, 2004

Wood, Phillips, Katz, Clark & Mortimer
500 West Madison Street
Suite 3800
Chicago, IL 60661-2511
Tel.: (312) 876-2103
Fax.: (312) 876-2020